

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FORMAL PETITION OF SOUTH CENTRAL BELL)	
TELEPHONE COMPANY FOR CONFIDENTIAL)	
TREATMENT OF ITS SPECIAL SERVICE CONTRACT)	CASE NO. 90-255
WITH THE UNIVERSITY OF LOUISVILLE FOR)	
T-1 TERMINATION INTO AN ANALOG ESSX)	

O R D E R

This matter arising upon petition of South Central Bell Telephone Company ("South Central Bell") filed July 3, 1990 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the cost support data developed in connection with a Special Service Arrangement Contract with the University of Louisville for T-1 Termination into an Analog ESSX on the grounds that disclosure is likely to cause South Central Bell competitive injury, and it appearing to this Commission as follows:

In this proceeding South Central Bell seeks approval of a contract with the University of Louisville for the provision of a T-1 Termination into an Analog ESSX for AT&T Megacom Service. By this petition South Central Bell seeks to protect as confidential the cost support data developed in connection with the contract.

The information sought to be protected is not known outside of South Central Bell and is not disseminated within South Central Bell except to those employees who have a legitimate business need to know and act upon it. South Central Bell seeks to preserve the confidentiality of this information through all appropriate means.

In support of its position South Central Bell relies upon Board of Education v. Lexington-Fayette Urban County Human Rights Comm'n, Ky.App., 625 S.W.2d 109 (1981). That case involved a claim for exemption under KRS 61.878(1)(a) of the Kentucky Open Records Act which exempts from disclosure "information of personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." The court interpreted the phrase "clearly unwarranted invasion of personal privacy" to require balancing of the individual's privacy interest against the general public's interest in disclosure only when the information requested is of a personal nature. The information sought to be protected here is commercial information which is protected under KRS 61.878(1)(b). That section does not require balancing the public's interest against the interests of the source of the information. Therefore, reliance upon the decision in Board of Education v. Lexington-Fayette Urban County Human Rights Comm'n, *supra* is misplaced.

807 KAR 5:001, Section 7, derives its authority from KRS 61.878(1)(b). That section exempts from public disclosure information related to scientific research, the application for a loan, or confidential commercial information when such information has previously been obtained from a private party. To qualify for this exemption it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate

actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The cost data sought to be protected includes South Central Bell's capital and operating costs, as well as contributions for the service. Ordinarily, cost data that is specific to a service would furnish providers of competing services information which would allow them to more readily compete with South Central Bell. However, in this case, while it is technically possible for customers of this service to use PBX, or even totally bypass South Central Bell, such use is highly unlikely. Therefore, there are no potential competitors for the service and the cost data is not entitled to protection.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

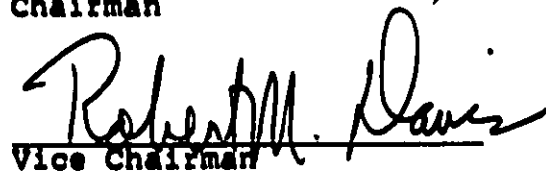
1. The petition to protect as confidential the cost support data developed by South Central Bell in connection with a Special Arrangement Contract with the University of Louisville for a T-1 Termination into an Analog ESSX be and is hereby denied for public inspection.

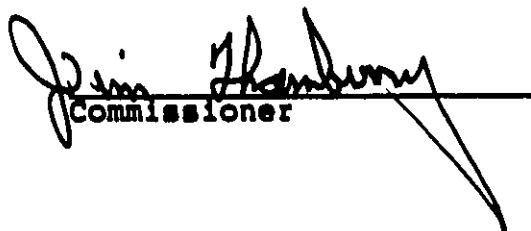
2. The information sought to be protected shall be held and retained by this Commission for five working days from the date of this order, at the expiration of which it shall be placed in the public record.

Done at Frankfort, Kentucky, this 20th day of September, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director